

Assembly Bill No. 1762

CHAPTER 85

An act to repeal and add Section 10026 of the Business and Professions Code, relating to real estate.

[Approved by Governor July 15, 2010. Filed with
Secretary of State July 15, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1762, Hayashi. Real estate.

The Real Estate Law provides for the regulation and licensure of real estate brokers and salespersons by the Real Estate Commissioner. As used in the Real Estate Law, the term "advance fee" is defined as a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee from a principal before fully completing each and every service the licensee contracted to perform, or represented would be performed, with certain exceptions.

This bill would redefine the term "advance fee" to mean a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, as defined, before fully completing the service the licensee contracted to perform or represented would be performed, with certain exceptions. The bill would, in addition to the existing exceptions, also exempt from the definition of advance fee moneys claimed, demanded, charged, received, or collected for the purposes of advertising the sale, lease, or exchange of real property or a business opportunity in a newspaper, written publication, or other electronic media, as specified, or moneys earned for real estate services under a limited service contract, as defined, for stand-alone services. The bill would also exempt from that definition a contract between a real estate broker and a principal that requires payment of a commission to the broker after the contract is fully performed.

The people of the State of California do enact as follows:

SECTION 1. Section 10026 of the Business and Professions Code is repealed.

SEC. 2. Section 10026 is added to the Business and Professions Code, to read:

10026. (a) The term "advance fee," as used in this part, is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, as that term is defined in Section 10027, before fully completing the service

the licensee contracted to perform or represented would be performed. Neither an advance fee nor the services to be performed shall be separated or divided into components for the purpose of avoiding the application of this division.

(b) For the purposes of this section, the term “advance fee” does not include:

(1) “Security” as that term is used in Section 1950.5 of the Civil Code.

(2) A “screening fee” as that term is used in Section 1950.6 of the Civil Code.

(3) A fee that is claimed, demanded, charged, received, or collected for the purpose of advertising the sale, lease, or exchange of real estate, or of a business opportunity, in a newspaper of general circulation, any other written publication, or through electronic media comparable to any type of written publication, provided that the electronic media or the publication is not under the control or ownership of the broker.

(4) A fee earned for a specific service under a “limited service” contract. For purposes of this section, a “limited service” contract is a written agreement for real estate services described in subdivision (a), (b), or (c) of Section 10131, and pursuant to which such services are promoted, advertised, or presented as stand-alone services, to be performed on a task-by-task basis, and for which compensation is received as each separate, contracted-for task is completed. To qualify for this exclusion, all services performed pursuant to the contract must be described in subdivision (a), (b), or (c) of Section 10131.

(c) A contract between a real estate broker and a principal that requires payment of a commission to the broker after the contract is fully performed does not represent an agreement for an advance fee.

(d) This section does not exempt from regulation the charging or collecting of a fee under Section 1950.5 or 1950.6 of the Civil Code, but instead regulates fees that are not subject to those sections.

SEC. 3. The changes made to Section 10026 of the Business and Professions Code by this act are intended to supersede the changes made to Section 10026 of the Business and Professions Code by Chapter 630 of the Statutes of 2009, but are not otherwise intended to alter the obligations or liability of any person pursuant to Chapter 630 of the Statutes of 2009.